



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Mil-Base Industries, Inc.

File: B-259949

Date: January 23, 1995

DECISION

Mil-Base Industries, Inc. protests the award of a contract to A.I.W. Alton by the Defense General Supply Center, Defense Logistics Agency (DLA), under solicitation No. SPO440-94-R-1128. Mil-Base challenges the determination that A.I.W. Alton is a responsible contractor.

We dismiss the protest.

A determination that a bidder or offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Whether the awardee had the ability and intention of complying with the requirements is simply a matter for the contracting officer, in the exercise of her discretionary business judgment, to consider in making the responsibility determination. An agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236587.2, Feb. 12, 1990, 90-1 CPD ¶ 177. While Mil-Base alleges that a more thorough investigation or pre-award survey would have shown that A.I.W. Alton was not responsible, that, even if true, does not establish that the agency may have acted fraudulently or in bad faith. It is simply up to the agency, which must bear the burden of deficient contract performance, to decide what is necessary in order to determine if a bidder or offeror is capable of performing the contract. DLA's approach—which did not include a pre-award survey—therefore is a permissible one and provides no basis for our review of this matter.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel